IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.740-SB OF 1995

DATE OF DECISION: APRIL 23, 2007

Punna Singh and others

.....Appellants

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Kuldip Sanwal, Advocate,
for the appellants.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Three appellants, namely, Punna Singh, Gurdial Singh and Darshan Singh have filed this appeal against the order of their conviction for offences under Sections 307, 326, 325, 323, 324, 34 IPC. Upon their conviction, the appellants were sentenced as under:-

Name	***SENTENCE***
i. Gurdial Singh	7 years RI and fine of Rs.500/-. In default of payment of fine, two months further RI under Section 307 IPC.
-	2 years RI and to pay a fine of

Rs.200/-. In default of payment of fine, to further undergo RI for one month u/s 325/34 IPC.

- 1 year RI u/s 324/34 IPC.
- 6 months RI u/s 323/34 IPC.

ii. Punna Singh — 7 years RI and fine of Rs.500/-. In default of payment of fine, two months further RI under Section 307/34 IPC.

- 2 years RI and to pay a fine of Rs.200/-. In default of payment of fine, to further undergo RI for one month u/s 325 IPC.
- 1 year RI u/s 324/34 IPC.
- 6 months RI u/s 323 IPC.

iii. Darshan Singh — 7 years RI and fine of Rs.500/-. In default of payment of fine, two months further RI under Section 307/34 IPC.

- 2 years RI and to pay a fine of Rs.200/-. In default of payment of fine, to further undergo RI for one month u/s 325/34 IPC.
- 1 year RI u/s 324/34 IPC.
- 6 months RI u/s 323/34 IPC.

All the sentences were to run concurrently.

Aggrieved against their conviction and award of sentence, as afore-mentioned, the appellants have filed the present appeal. It is stated that during the pendency of the appeal, Punna Singh, appellant, has died but no proof of death is submitted before the Court.

The case of the prosecution, in brief, is that on 25.6.1990, one Shiv Singh, Agriculturist, alongwith his wife Kulwant Kaur and son Baljit Singh were present at their tubewell. Late Punna Singh armed with dang, Darshan Singh armed with Gandasi and Gurdial Singh armed with iron road and a knife came there and switched on their tubewell and diverted the water of the tubewell for irrigating their field. Shiv Singh forbid the appellants from doing so. Thereupon, appellant, Darshan Singh, gave Gandasi blow on the back side of the left leg of Baljit Singh. Gurdial Singh gave a knife blow on the left flank of Kulwant Kaur whereas Punna Singh gave a dang blow to Kulwant Kaur, which hit her on left wrist and ring finger of right hand. When Shiv Singh came forward to intervene, all the appellants caused injuries to him as well. Shiv Singh suffered injuries on the right side of his forehead, left shoulder and left arm. The injured persons raised cries, which attracted Charan Singh and Bachiter Singh to the scene. They also witnessed the occurrence. The appellants thereafter bolted from the place with their weapons. Bachiter Singh arranged the conveyance and the injured were shifted to Civil Hospital, Sirihargobindpur. On a statement made by Shiv Singh to ASI Bahadur Singh, the present FIR was registered, leading to investigation, trial and conviction. In support of its case, the prosecution examined six witnesses.

The appellants, when asked to explain the evidence and circumstances appearing against them, denied the allegations made against them and pleaded that they are innocent. The defence, did not lead any evidence in support of its case.

Counsel appearing for the appellants would contend that the prosecution has not succeeded in proving that the injury suffered by Kulwant Kaur was of such a nature to attract the provisions of Section 307 IPC. As contended before the trial Court, the counsel says that Injury No.1 suffered by Kulwant Kaur, on the basis of which allegation of an offence under Section 307 IPC is made, would fall under Section 324 IPC. This injury is attributed to Gurdial Singh and the Court, while negating the submission of the defence in this regard, observed that intention and knowledge on the part of Gurdial Singh is to be viewed to ascertain if the act on his part was such that death would have resulted, then offence under Section 307 IPC would stand established. Gurdial Singh was armed with knife, a lethal weapon and he had given an injury on a vital part of the body. In this background, the opinion given by PW1 Dr.Lakhwinder Singh that this injury was dangerous to life was ignored by the trial Court to conclude that offence under Section 307 IPC is made out against him. It is pleaded that opinion of doctor was not enough to establish that injury No.1 suffered by Kulwant Kaur would lead to an offence under Section 307 IPC. As per the counsel, merely because the injury suffered by her was described as dangerous to life, without anything more, would only attract the offence under Section 324 IPC etc. In addition, he would also submit that the testimony of Kulwant Kaur would show that no knowledge or intention could be attributed

to appellant Gurdial Singh for causing injury to Kulwant Kaur. Referring to the evidence of Kulwant Kaur (PW4), the counsel would point out that she deposed that when she tried to rescue her son Baljit, Gurdial Singh gave knife blow on her left side, on which she fell down on the ground. PW4 thereafter has simply mentioned that accused gave more injuries on her person with their respective weapons. She has not named any particular appellant, who gave her subsequent injuries. During her cross-examination, she conceded that she fell unconscious on receipt of knife blow and could not know what happened thereafter. From this, the counsel submits that appellant, Gurdial Singh or for that matter other appellants had no intention to cause any injury to Kulwant Kaur. She apparently intervened in this fight and suffered this blow, which was not intended for her. In addition, the counsel would also say that her evidence in regard to subsequent events can also not be believed in the background that she herself stated that she became unconscious after the knife blow and thereafter did not know what happened. As per the counsel, from the facts, as afore-mentioned, no offence under Section 307 IPC would be made out and at the most, an offence under Section 335 IPC may reveal. In support, the counsel has drawn my attention to the case of ***Pritam Singh Vs. The State of Punjab,*** 1983 (2) RCR 485. In this case, the accused had given a dagger injury to a person when the latter had given filthy abuses to the accused. The Court took the view that conviction under Section 307 IPC would not be made out and accordingly found him responsible for an offence under Section 335 IPC by observing that he himself had invited trouble. Section 335 IPC punishes an offence

of causing grievous hurt voluntarily on grave and sudden provocation. There is no evidence of any provocation in this case. Ratio of this case, is not attracted in this case. It is then pleaded that the facts proved would more appropriately attract the provisions of Section 308 IPC and not an offence under Section 307 IPC. Submission is that the appellants could not be attributed any knowledge or intention to cause any injury to Kulwant Kaur and if any injury in the melee is caused to her, it would not attract the provisions of the offence charged. Appellant Gurdial Singh never intended to cause injury to Kulwant Kaur (PW4). She had come in between during the scuffle. Gurdial Singh, as such, could be attributed with knowledge that by inflicting injury, he was likely to cause death and not intention to cause death. Thus, attempt to commit such offence would be punishable as attempt to commit culpable homicide under Section 308 IPC. Only one injury was caused and the appellant did not repeat the assault. The injury caused is without premeditation on the spur of moment. When in an occurrence of a scuffle of this nature, a victim is injured, where none of the vital organs are effected and in the background that injury is not intended to be caused to the said victim, then the accused could more appropriately be attributed the knowledge that the injury was likely to cause death. In such an eventuality, accused more appropriately be blamed for an attempt to commit culpable homicide, not amounting to murder and not an attempt to murder. Having regard to the evidence, as referred to above, offence under Section 308 IPC is proved instead of Section 307 IPC, for which the appellants have been convicted.

Accordingly, the conviction of the appellants, as recorded

under Section 307 IPC, is set-aside and instead appellant Gurdial Singh would stand convicted for an offence under Section 308 IPC for having caused injuries to Kulwant Kaur whereas appellant Darshan Singh and Punna Singh are convicted for the same offence under Section 308 with the aid of Section 34 IPC. Counsel for the appellants did not make any submission so far as the conviction of the appellants under other Sections is concerned and the same is accordingly up-held.

The appellants were sentenced to suffer 7 years RI, upon their conviction under Section 307 IPC. Since the conviction of the appellants under the said Section is not being maintained, the sentence awarded to them would call for interference. Maximum sentence that can be awarded under Section 308 IPC, when injury is caused is 7 years RI with fine or both. In contrast, the offence under Section 307 IPC is punishable upto imprisonment for life. The incident in this case is of the year 1990. The appellant had faced prolonged trial and stood convicted and sentenced since 14.11.1995. The present appeal is pending before this Court for almost 12 years. One of the appellants, Punna Singh, aged 80 years at the time of incident, is no more. Surviving appellants are now aged about 57 and 62 years respectively. They have faced prolonged prosecution with the sentence staring at them for almost 12 years. These aspects call for some compassion and leniency to the appellants. It is not appropriate to grant them the benefit of probation as pleaded as they are found to have caused injuries to three persons, including a lady. Taking all these facts into consideration, I am of the view that ends of justice would be met if the appellants are sentenced to

suffer RI for 1 year and 6 months with a fine of Rs.500/- for an offence under Section 308 IPC. The sentence awarded to them under remaining Sections would stand reduced to 6 months RI. The fine awarded for each offence shall remain same and in default thereof, the appellants would undergo sentence of one month RI. It is apparent from the record that the appellants are on bail. They are accordingly directed to surrender before the Chief Judicial Magistrate, Gurdaspur, to undergo the remaining portion of sentence.

Subject to above modification in the conviction and sentence, the appeal is dismissed.

April 23, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**